

**IMPERIAL WEST CHEMICAL)
COMPANY,)**

Appellant,

▼

FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)

Respondent.

The Board heard testimony of sworn witnesses, reviewed all the exhibits and listened to opening statements and closing arguments of the parties. Based thereon, the Board makes these:

I

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER
PCHB No. 92-4

1
2 II

3 On June 7, 1987, Imperial West applied to Ecology for a National Pollutant Discharge
4 Elimination System ("NPDES") waste discharge permit. The application identified the
5 applicant with an industrial code number 72819, and specified the business as aluminum
6 sulfate manufacturing.

7 III

8 In response to Ecology concerns, Imperial West sent to Ecology a second application
9 form, on October 20, 1988. That form contained the same industrial code and specification of
10 the manufacturing activity, as were stated in the prior submittal. However, the "Nature of
11 Business" description on the form contained a statement that "There is no discharge from the
12 aluminum sulfate plant."

13 IV

14 On January 31, 1984, Ecology issued an NPDES permit to Imperial West. The fact
15 sheet for the permit described the discharge as being from the washing process. The permit
16 cites effluent limitations for the following categories of pollutants:

17 Total Suspended Solids
18 pH
19 Temperature
20 Zinc
21 Copper
22 Chlorides
23 Ammonia

24 V

25 Imperial West has, on occasion, violated the effluent limitations in its permit. The
26 subsequent bioassays that have been taken have shown no resulting harm to organisms.

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2 VI

3 On February 23, 1989, Ecology wrote to Imperial West, that as of March 1, 1991,
4 Ecology would bill that company a permit fee in 1989 of \$2,876.71. The annual fee would be
5 \$7,000.

6 VII

7 In January 1992, Ecology, by regulation, raised the annual permit fee applicable to
8 Imperial West to \$15,890, for the year 1993. WAC 173-224-040(2). All NPDES permit fees
9 were raised by Ecology at that time, because one half of the permit funding, which had
10 originally come from the General Fund, had been eliminated.

11 VIII

12 The public was allowed to comment on this regulatory change. No comment or
13 objection was received from Imperial West.

14 IX

15 On October 15, 1991, Imperial West wrote to Ecology to protest the permit fee,
16 requesting that its operation be reclassified because it did not discharge in the process of
17 manufacturing of aluminum sulfate.

18 X

19 Ecology responded by letter that the proper permit fee category for Imperial West was
20 "Inorganic Chemical Manufacturing: E- Metal Salts". Imperial West appealed that decision to
21 this Board.

22 XI

23 There are two other plants in Washington that manufacture aluminum sulfate. They
24 also discharge no pollutants from their manufacturing process to the surface waters of the
25 state. Unlike Imperial West, they do not wash the material before using it. Those facilities

1 have state waste discharge permits. They are classified under WAC 173-224-040(2) as:
2 "Inorganic chemicals Manufacturing (c) Metal Salts". They will be charged a permit fee of
3 \$15,890 in 1993.
4

5 XII

6 Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.
7 From these Findings of Fact, the Board issues these:

8 CONCLUSIONS OF LAW

9 I

10 RCW 90.48.465 authorizes Ecology to establish annual permit fees for waste discharge
11 permits. That law provides broad latitude to Ecology in setting fees, as follows:

12 All fees charged shall be based on factors relating to the complexity of permit
13 issuance and compliance and may be based on pollutant loading and toxicity and
14 be designed to encourage recycling and the reduction of the quantity of
15 pollutants. Fees shall be established in amounts to fully recover and not exceed
16 expenses incurred by the department in processing permit applications and
17 modifications, monitoring and evaluating compliance with permits, conducting
18 inspections, securing laboratory analysis of samples taken during inspections
19 reviewing plans and documents directly related to operations of the permittees,
20 overseeing performance of delegated pretreatment programs, and supporting the
21 overhead expenses that are directly related to these activities. (emphasis added.)
22 RCW 90.48.465(1).

23 II

24 The Environmental Protection Agency ("EPA") prohibits the discharge of process
25 wastewater pollutants from aluminum sulfate manufacturing, into navigable waters.
26 40 CFR 415.22.
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III

WAC 173-224-100 authorizes any person aggrieved by a waste discharge permit fee determination to file a written appeal to Ecology.

IV

The statute does not require a direct relationship between the fee charged and the pollutant discharged. The law mandates that permit fees be based on factors relating to the complexity of permit issuance, and that they be an amount to fully cover a panoply of specified agency administrative expenses involved in the permitting process. The law makes discretionary the basing of such fees on pollutant loading, toxicity, and recycling.

V

Ecology, has chosen, through its regulations, to base fees on the category of the industry involved, as opposed to the type of discharge. WAC 173-224-040. Imperial West falls under the category: "Inorganic Chemicals Manufacturing (e) Metal Salts". WAC 173-224-040(2).

VI

Imperial West contended that it should be classified as "Ore Mining (b) with physical concentration processes." WAC 173-224-040(2). That category does not adequately depict Imperial West's activity, which is primarily the manufacture of aluminum sulfate. There was no testimony to indicate that Imperial West engages in mining activity. Rather Imperial West purchases the one used in its manufacturing process from several sites.

VII

If Imperial West believes that Ecology's regulation should be changed, it may address such proposals to Ecology in its rule-making capacity. This Board, however, concludes Ecology's regulation is consistent with RCW 90.48.465.

VIII

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.
From the foregoing, the Board issues this:

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ORDER

The decision of Ecology to not reassess the permit fee for 1993, against Imperial West, which has been set at \$15,890.00 is affirmed.

DONE this 20th day of October, 1992.

POLLUTION CONTROL HEARINGS BOARD


ROBERT V. JENSEN, Presiding Member


ANNETTE S. MCGEE, Member

P92-4F